

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

CRAIG CUNNINGHAM,

Plaintiff,

v.

MICHAEL MONTES, Tollfreezone.com, Inc.,
Mydataguys.com, LLC, Podmusicgear.com, Inc.,
Tollfreezone.com, Inc., dba Docauditor.com,
Tollfreezone.com, Inc., dba Mobile Trackme,
Emailmyvmail.Com, Inc., and John and Jane Does 1-10,

Case No. 16-cv-761

Defendants.

**SUPPLEMENTAL BRIEF IN OPPOSITION
TO PLAINTIFF'S MOTION FOR DEFAULT JUDGMENT**

Defendants submit this supplemental brief to make the Court aware of a decision issued Friday, July 14, 2017, in one of the Plaintiff's lawsuits against Michael Montes and Tollfreezone.com, Inc., in the United States District Court for the Middle District of Tennessee. (Declaration of Kevin Trost dated July 17, 2017, ¶ 2, Ex. A.) This decision denied Cunningham's motion to serve Montes and Tollfreezone.com, Inc., by publication at the Somerset, Wisconsin address. (*Id.*) The decision is relevant to the present action because Magistrate Judge Joseph Brown noted that Cunningham had obtained summonses for Montes and Tollfreezone.com, Inc., at Montes' San Juan Capistrano, California, address, yet submitted no evidence that he ever tried to serve these defendants at that address. (*Id.*, 7 – 8) ("By far the most obvious lead that Plaintiff has at his disposal is the San Juan Capistrano, California address for Defendant Montes . . . Plaintiff must exhaust leads such as this one before resorting to service by publication.")

The Tennessee court's decision is instructive because it confirms that Plaintiff has not acted in good faith in seeking this default judgment and was not reasonably diligent in trying to serve the Defendants prior to seeking permission to serve them via publication. Cunningham was aware prior to filing this lawsuit of Defendant Montes' address in San Juan Capistrano. He so pled in an Amended Complaint filed on March 22, 2016, in the Tennessee district court. ("Michael Montes is a natural person who can be served at 26961 Via La Mirada, San Juan Capistrano, California 92675 or 1731 50th Street, Somerset WI 54025.") (Declaration of Kevin Trost dated July 17, 2017, ¶ 3, Ex. B.) He filed a similar pleading in another lawsuit in the Tennessee district court on February 16, 2016. ("Michael Montes is the CEO of Tollfreezone.com, Inc., a currently suspended corporation that is still operating by Michael Montes and can be served at 26961 Via La Mirada, San Juan Capistrano, California 92675.") (July 5, 2017 Declaration of Michael Montes, ¶ 3, Ex. A.) Yet, Cunningham took no action to serve Montes at the California address and opted instead to serve him by publication at a rental property in Wisconsin owned by Montes' trust. Cunningham does not come before this Court with clean hands in seeking to obtain a default judgment against the Defendants. Plaintiff's motion should be denied.

Dated this 17th day of July, 2017.

AXLEY BRYNELSON, LLP

s/ Kevin D. Trost

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